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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,557	09/05/2003	Christopher T. Zirps	B0751/7034	8184

22832 7590 09/03/2004

KIRKPATRICK & LOCKHART LLP
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BOSTON, MA 02109-1808

EXAMINER

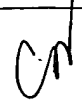
FLANAGAN, BEVERLY MEINDL

ART UNIT PAPER NUMBER

3739

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/656,557	Applicant(s) ZIRPS ET AL. 	
	Examiner Beverly M. Flanagan	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date <u>6/04 & 7/04</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: ____.</p> |
|---|---|

DETAILED ACTION

Information Disclosure Statement

The information disclosure statements filed June 28, 2004 and July 26, 2004 have been made of record and the references cited therein have been considered by the examiner. It is noted, however, that many of the same references are cited on both information disclosure statements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (U.S. Patent No. 6,306,081).

In regard to claim 1, Ishikawa et al. teaches a hood 1 for an endoscope comprised of a balloon 10 (which constitutes an endoscopic accessory), a cylindrical mount member 3 (which constitutes a collar mountable in the proximal end of hood 1) and a joining member 4 (which constitutes a radially flexible centering sleeve mountable in the distal end of hood 1) (see Figure 1). Ishikawa et al. are silent as to the material makeup of joining member 4. However, since both joining member 4 and mount member 3 attach to the surface of the endoscope 2 (as shown in Figure 3), is it inherent that they must exhibit some flexibility so that they can be positioned properly over the

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endoscope and maintain a frictional fit (otherwise they would become dislodged or damage the exterior surface of the endoscope). Furthermore, the use of flexible resin materials for forming sheaths, end caps or similar structures for placement over the distal end of the endoscope is well known in the art because of the flexible, expandable properties of resins and the consequent adaptability of the sheath, end caps, etc. to endoscopes of varying size and shape. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to form the joining member 4 of Ishikawa et al. from a flexible resin material. **In regard to claim 2**, inherent in the structure disclosed by Ishikawa et al. (as described above) are the method steps of providing balloon 10 inserting a the joining member 4 into the distal end of balloon 10, inserting mount member 3 into the proximal end of balloon 10 and placing the hood 1 on the distal end of an endoscope so that the balloon 10 is supported along its length and retained on the endoscope shaft by the components of the hood 1.

In regard to claims 3 and 4, Ishikawa et al. are silent as to a kit containing a plurality of hoods 1 and a measurement tool. However, it would have been obvious for one of ordinary skill in the art at the time the invention was made to manufacture the hood 1 in varying sizes to accommodate varying sized endoscopes and provide a plurality of said hoods in a kit, as to a surgical site having more than one endoscope. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a measurement tool in order to determine which of the plurality of hoods was suitable for a particular endoscope.

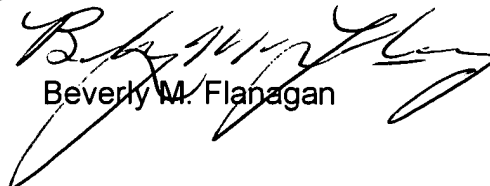
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references disclosing distal accessory attachments for endoscopes and adapters for holding them in place: Ishikawa et al., U.S. Patent No. 6,071,233 and Kobayashi, U.S. Patent No. 6,699,180.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (703) 305-7202. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan

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Primary Examiner
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